

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1144 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJ.

Versus

PREMJI KURJI BHATT

Appearance:

1. Criminal Appeal No. 1144 of 1986
Mr.K.P.Raval, learned Addl.P.P. for appellant No. 1
Mr.K.B.Anandjiwala, learned advocate, for Respondent
No.1
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CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 19/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The appellant - State of Gujarat has filed this acquittal Appeal and challenged the order of acquittal recorded by the learned Special Judge, Rajkot dated 20.6.1986 acquitting the respondent accused from the offence under Section 161 of the I.P.C. and under Section 5(2) of the Prevention of Corruption Act in Special Criminal Case No.7 of 1985.

2. This Appeal is pending since its admission as per order dated 30.3.1987. When the matter was notified before us for final hearing and as the advocate representing the respondent accused had shifted his practice from Ahmedabad to Delhi, we had issued notice to the respondent and accordingly respondent had appeared in person and requested for time as he was intending to engage an advocate. Thereafter, Mr. Anandjiwala had filed Vakalatnama on behalf of the respondent accused.

3. Mr. K.P.Raval, learned Addl. P.P. has while arguing the Appeal taken us through the paper book consisting of oral and documentary evidence recorded during the trial as well as the judgment under challenge. It is the contention of Mr.Raval that as found from the evidence led by the prosecution, it is transpired that the prosecution has established the case that the respondent accused being a public servant had demanded money from the complainant, who was working with the Corporation as a Safai Kamdar, for illegal gratification and further that the respondent accused had also accepted the amount from the complainant, which is established from the evidence of the complainant as well as the panch witness and the members of the raiding party and accordingly Mr.Raval has contended that the order of acquittal recorded by the learned Special Judge deserves interference by converting the order of acquittal into conviction.

4. Mr.Anandjiwala has vehemently urged that the learned Special Judge has given cogent reason while discarding the evidence of the prosecution witnesses and once the order of acquittal is passed, this court will not interfere in an acquittal Appeal by converting the same into conviction in light of the catena of decisions of the Supreme Court and accordingly it is his contention that the Appeal filed by the appellant State be dismissed by confirming the order of acquittal recorded by the learned Special Judge.

5. In light of the contentions raised before us, in brief we may refer to about the prosecution case. It is an admitted fact that the respondent was at the relevant time working in the Rajkot Municipal Corporation in the Health Department as Junior Clerk and he was a public servant and the complainant Shri Jaisukh Kalabhai was also working as a Safai Kamdar with the Rajkot Municipal Corporation. It is the case of the prosecution that the complainant Jaysukh Kalabhai has submitted bill for encashment of leave salary for which the respondent accused had demanded Rs.50/-- by way of illegal gratification from him and further on 16.4.1985 at about 1.55 P.M. at the office of the respondent, for sanctioning the bill of the complainant, accused had accepted the amount of Rs.50/-- from the complainant and thereby committed offence under Section 161 of the I.P.C. and the offence under Section 5(2) of the Prevention of Corruption Act.

6. To consider the contentions raised before us, it is necessary for us to refer to in brief the evidence of P.W.1, who was at the relevant time working as a Safai Kamdar with the Corporation. As found from the evidence of Jaysukh Kalabhai, who was working as a Safai Kamdar, he has claimed for leave encashment for which the respondent had demanded illegal gratification of Rs.60/-. Ultimately the respondent accused had agreed to take Rs.50/-- and accordingly the complainant approached the Anti Corruption Department and filed complaint against the respondent for such illegal demand by the accused. He approached the Officer of the Anti Corruption Department on 16.4.1985 and gave complaint before Shri Manjaria. Shri Manjaria has inquired from complainant Jaysukh Kalabhai and a complaint was recorded by Shri Manjaria and Shri Manjaria has made arrangement for securing presence of Panchas by making telephone. After the Panchas were arrived at his office, the complainant was introduced to the Panchas and the preliminary panchanama was drawn in presence of Panchas, wherein currency note of Rs.50/-- was taken from the complainant and the anthracene powder was applied to the said currency note. The number of the notes were also taken down in the Panchanama. The experiment of ultra violet lamp was also done and the necessary instructions were given to the complainant as well as to the Panchas and the raiding party had accordingly proceeded at the office of the accused. The complainant with Panch No.1 Toliya had approached the office of respondent accused and the other members of the raiding party had followed them. The complainant had approached the accused and the accused had also welcomed him. The complainant had

inquired from accused about the leave encashment salary and accordingly the accused had asked the complainant that he is required to understand after making payment and inquired that whether he had brought the money or not and demanded Rs.50/-- and the accused had handed over the currency note of Rs.50/-by taking out from his left hand pocket of bush shirt through right hand and given to the accused, which the accused had counted the same by taking the same on his right hand and put the money on the right hand hip pocket of his pant. The complainant had accordingly as per the instruction put his left hand on his head and immediately Shri Manjaria came near the table of the accused and arrested the accused. The currency notes were recovered from the accused persons. A detailed panchanama was drawn in presence of Panchas. An experiment of ultra violet lamp was also done and the marks of anthracene powder were also found on the hands of the accused.

6.1 In cross examination it is transpired that at the time when he approached the respondent accused, he alongwith P.S.I. Shri Nagar was with him while the other members of the raiding party had not climbed on the stair case as they were all standing under the stair case. It is further found from his cross examination that no marks of anthracene powder were found on the bush shirt of the accused from inside as well as from outside. The witness has also admitted that he has not stated in his police statement that when he approached the accused at that time he saluted the accused and he informed the accused that he had already arrived and at that time accused had told him that he is waiting since long and the complainant had inquired from Bhatt that what happened to about the payment regarding leave encashment and at that time accused Bhatt had told him that he had to understand for giving money and accused had demanded Rs.50/-. No anthracene powder was found from the thumb of the accused.

7. Similarly the panch witness has in turn supported the case of the complainant. However, as found from the cross examination, Panch had also admitted that no anthracene powder was found on the thumb of the accused and no anthracene powder was found on the hip pocket of the accused.

8. The Investigating Officer Shri Manjaria has also deposed in the manner in which the accused was found with money and how the experiment of anthracene powder was made in presence of panchas and he has also admitted that there was no mark of anthracene powder on the thumb of

the accused.

9. The learned Special Judge has discussed in length the evidence led by the prosecution, including the complainant and the panch witness and the Investigating Officer. The learned Special Judge has in term while appreciating the evidence of the prosecution witnesses recorded finding that the acceptance of the currency note by the accused is not proved and evidence of Shri Toliya cannot be believed. The learned Special Judge has also in term not accepted the evidence of the complainant and the evidence of Shri Manjaria, Officer of the raiding party. The learned Special Judge has in term after appreciating the evidence observed that as per the evidence led by the prosecution that the accused has accepted the money from the complainant and he counted the currency and if the currency were counted, it can not be done without the help of the thumb and the phalanges and as found from the evidence that there were no marks of anthracene powder on the thumb of the accused. The learned Special Judge has in fact considered the oral as well as documentary evidence while giving reason in his Judgment paragraph 105. The learned Special Judge has accordingly recorded finding that the prosecution has not been able to establish the case of demand of illegal gratification and the payment made by the complainant to the accused and accordingly the learned Special Judge has held that the prosecution has failed to prove the case against the accused and thereby recorded order of acquittal of the accused.

10. In light of the reason assigned by the learned Special Judge, it is difficult for us to accept the contention of Mr. Raval that the learned Special Judge has committed error in appreciating the evidence. In our view, the learned Special Judge has rightly appreciated the evidence led by the prosecution and rightly come to the conclusion that the prosecution has failed to prove the case against the accused. In our view, no other view is possible and hence the Appeal filed by the State deserves to be dismissed.

11. Accordingly Appeal is dismissed and the order of acquittal recorded by the learned Special Judge, Rajkot on 20.6.1986 acquitting the respondent accused from the offences under Section 161 of the I.P.C. as well as under Section 5(2) of the Prevention of Corruption Act, 1947 in Special Criminal Case No. 7 of 1985 is hereby confirmed.

(D.K.Trivedi, J)

(D.P.Buch, J)

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